

EXHIBIT “E”

Notice of Removal

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(bb 7922)

-----X
DEVANDER SINGH,

Plaintiff,

Civil Action No.:
19-CV-

-against-

NOTICE OF REMOVAL

RONALD POLES, PENSKE TRUCK LEASING CO.,
LP., PENSKE TRUCK LEASING CORPORATION,
COSTCO WHOLESALE CORPORATION, COSTCO
WHOLESALE MEMBERSHIP, INC. and SAHIB
S. WALIA,

Queens County
Index No.: 715677/2018

Defendants.
-----X

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK:

Defendants, RONALD POLES [hereinafter "POLES"] and COSTCO
WHOLESALE CORPORATION [hereinafter "COSTCO"], by their
attorneys, SIMMONS JANNACE DELUCA, LLP, upon information and
belief, respectfully petitions the Court, pursuant to 28 U.S.C.
§ 1441, as follows:

1. The above-captioned civil action was commenced and is
now pending in the Supreme Court of the State of New York,
County of Queens bearing Index Number 715677/2018. A trial has
not yet been had therein. A copy of the Summons and Verified
Complaint is annexed as **Exhibit "A"**.

2. On August 24, 2018, this office interposed an Answer
to plaintiff's Complaint on behalf of POLES and COSTCO. A copy
of Defendants' Answer is annexed hereto as **Exhibit "B"**.

3. On September 24, 2018, defendant, SAHIB S. WALIA [hereinafter "WALIA"], interposed his Verified Answer. A copy of which is annexed hereto as **Exhibit "C"**.

4. On November 26, 2018, plaintiff discontinued the within action against defendants PENSKE TRUCK LEASING CO., LP., PENSKE TRUCK LEASING CORPORATION AND COSTCO WHOLESALE MEMBERSHIP, INC. A copy of the discontinuance is annexed hereto as **Exhibit "D"**.

5. The action seeks monetary damages for injuries allegedly suffered by plaintiff, DEVANDER SINGH, while he was a passenger in a vehicle driven by defendant WALIA. Plaintiff has alleged WALIA's vehicle was rear ended by a vehicle driven by defendant POLES, in the course of his employment with COSTCO. Plaintiff's Verified Complaint sounds in negligence.

6. This case was not initially removable as defendant, WALIA, is a citizen of New York. On January 16, 2019, defendant WALIA filed a motion for summary judgment on the issue of liability. Therein, he argued full liability for the subject accident lies with defendants POLES and COSTCO.

7. On April 4, 2019, plaintiff filed an Affirmation in Partial Opposition to the motion. Therein, plaintiff conceded that he has no proof WALIA was negligent. A copy of plaintiff's Affirmation in Partial Opposition is annexed hereto as **Exhibit "E"**.

8. On April 4, 2019, plaintiff also cross-moved for summary judgment on the issue of liability against POLES and COSTCO. Therein, he argued POLES and COSTCO were solely liable for the subject accident. A copy of plaintiff's Affirmation in Support is annexed hereto as Exhibit "F".

9. This Notice of Removal is being filed within thirty (30) days of plaintiff's concession WALIA is an improper party to this litigation.

GROUND FOR REMOVAL

10. POLES and COSTCO seek removal based upon diversity of citizenship and fraudulent joinder, pursuant to 28 U.S.C. § 1446(b)(3).

11. The amount in controversy requirement of \$75,000 is satisfied as plaintiff has undergone numerous surgical procedures, has alleged hospital expenses of \$1,000,000, physician services of \$1,000,000 and loss of earnings of \$3,000,000.

12. The action involves a controversy between citizens of different states, in that: (a) plaintiff is a citizen of the State of New York; (b) Defendant POLES is now, and was at the time the action was commenced, a resident of the State of New Jersey; and (c) Defendant COSTCO is now, and was at the time the action was commenced a corporation incorporated in the State of

Washington with its principal place of business in the State of Washington.

13. This action is one of which the District Courts of the United States have original jurisdiction under 28 U.S.C. § 1332. There is complete diversity between the parties.

14. Defendant WALIA, is now, and was at the time the action was commenced, a resident of New York.

15. Diversity jurisdiction is generally determined by the face of the complaint. However, an exception to this rule exists where non-diverse defendants are fraudulently joined. Under fraudulent joinder, "courts overlook the presence of non-diverse defendants if from the pleadings there is no possibility that the claims against that defendant could be asserted in state court." Briarpatch Ltd., L.P. v. Phoenix Pictures, Inc., 73 F.3d 296, 302 (2d Cir. 2001); Allied Programs Corp. v. Puritan Ins. Co., 592 F. Supp. 1274, 1276 (S.D.N.Y. September 13, 1984) (quoting Nosonowitz v. Alleghany Beverage Corp., 463 F. Supp. 162, 163 [S.D.N.Y. January 12, 1978]) (joinder is fraudulent when "there can be no recovery [against the defendant] under the law of the state on the cause alleged, or on the facts in view of the law as they exist when the petition to remand is heard").

16. As evidenced by plaintiff's inability to oppose WALIA's motion for summary judgment on liability, and cross-

motion for summary judgment on liability against POLES and COSTCO, plaintiff sued WALIA solely in an effort to destroy diversity jurisdiction.

CONCLUSION

17. Written notice of the filing of this Notice of Removal will be given to plaintiff promptly after the filing of this Notice. A true and correct copy of this Notice of Removal will be filed with the Clerk of the Court of the Supreme Court of the State of New York, County of Queens promptly after the filing of this Notice.


18. Attached to this Notice, and by reference made a part hereof, are true and correct copies of all process and pleadings filed herein.

19. By filing this Notice of Removal, POLES and COSTCO do not waive any defenses which may be available to them, specifically including, but not limited to, their right to contest in *personam* jurisdiction over petitioner, improper service of process and the absence of venue in this Court or the Court from which this action has been removed.

WHEREFORE, defendants pray that the above-captioned action now pending in the Supreme Court in the State of New York, County of Queens, be removed therefrom to this Court.

Dated: Hauppauge, New York
April 4, 2019

SIMMONS JANNACE DELUCA, LLP
Attorneys for Defendants
RONALD POLES and COSTCO WHOLESALE
CORPORATION

By: 
Bradley K. Bettridge
Office & P.O. Address:
43 Corporate Drive
Hauppauge, New York 11788
(631) 873-4888

TO: STEPHEN A. SKOR, ESQ.
Attorney for Plaintiff
Office & P.O. Address:
114-08 101 Avenue, 2nd floor
Richmond Hill, New York 11419
(914) 434-6092

LAW OFFICES OF NANCY L. ISSERLIS
Attorneys for Defendant
Sahib S. Walia
Office and P.O. Address
36-01 43rd Avenue
Long Island City, New York 11101
(718) 361-1514

NYSCF (Rev. 09/19), NO. 25

CIVIL COVER SHEET

RECEIVED NYSCF: 04/09/2019

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DEVANDER SINGH

(b) County of Residence of First Listed Plaintiff Queens
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Stephen A. Skor, Esq.
114-08 101 Avenue, 2nd Floor,
Richmond Hill, New York 11419 (914)434-6092

DEFENDANTS

RONALD POLES, PENSKE TRUCK LEASING CO., LP., PENSKE TRUCK LEASING CORPORATION, COSTCO WHOLESALE CORPORATION et al

County of Residence of First Listed Defendant Morris
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Simmons Jannace DeLuca, LLP
43 Corporate Drive
Hauppauge, New York 11788

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Tort Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §1441

Brief description of cause:
Negligence

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

4/5/19

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, _____, counsel for _____, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☐
☐
☐

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,

N/A - Defendant cannot certify to plaintiff's damages.

the complaint seeks injunctive relief,

the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

None

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? ☐ Yes ☒ No
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☐ Yes ☒ No
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☒ Yes ☐ No
- c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☐ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒

Yes

☐

No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐

Yes (If yes, please explain

☒

No

I certify the accuracy of all information provided above.

Signature: _____